

The Abell Report

What we think about, and what we'd like you to think about

Published as a community service by The Abell Foundation

One Year Later: Baltimore's Criminal Justice Coordinating Council Reports On The City's Troubled Criminal Justice System. Problems remain, but there is good news: reforms are working to dispose of drug possession cases quickly.

ABELL SALUTES "STRIVE-Baltimore" It can provide a job and a new life, but only for those who survive its rigorous program

A convicted rapist, a single mother, an armed robber, a heroin addict (among others in an assemblage of societal drop-outs) — all seated in a spare and sparsely-furnished classroom in a modest building on Druid Park Drive in Lower Park Heights — in the heart of one of Baltimore's City's most disadvantaged neighborhoods. An instructor who resembles a marine drill instructor barks commands.

— "Remember, the boss is always right!"

— "Wear only white shirts and only black slacks. Women business suits or blouses."

— "Never, never be late."

— "This is war. The enemy? Your attitude."

— "Finally, you don't like any of this? Leave!"

Welcome to STRIVE-Baltimore.

Continued on page 12

Calls for reform of Baltimore City's court system began in January, 1999, when newspapers reported that two men accused of robbing a supermarket and carjacking a family of five were let go because prosecutors and judges could not bring them to trial on time. In that same period, a judge dismissed a murder charge because a case had been delayed for three years. An incensed community demanded reform.

Many looked at Baltimore's criminal justice system and called it broken. In response to concerns—by the city and state governments, the legal community, and the public — the Criminal Justice Coordinating Council was created, with John Lewin as project coordinator. The Council was charged with identifying systemic problems and making recommendations on how the problems might be solved. In carrying out its responsibility, the Council prepared a study, including recommendations, and presented the report in October of that same year, 1999. One year later the Council reports its views of the past year's progress in the reform effort, and addresses areas it sees yet to be resolved.

It makes five recommendations for moving forward.

The Council's Report of October 2000 Follows:

Many of the system's changes sought by the Council have addressed

"the law's delay"—a culture where criminal cases are weakened and defendants are rewarded by continued postponement. Postponements discourage witnesses from coming back to court and as a result, initially strong cases may be dismissed or resolved with lenient pleas offers, after the passage of time. The Council has concentrated on efforts to make the criminal justice system more efficient, and to make earlier disposition of cases achievable so that sanctions may have greater impact on criminal conduct.

* * *

Discovery Abuse

Maryland Rule 4-263 requires that the parties in a criminal case must provide pretrial discovery (disclosure to the opposite party of pertinent facts). For many years, this requirement was not consistently followed in Baltimore City Circuit Court, and as a result cases where discovery had not been made in a timely fashion were postponed and

Continued on page 2

Continued from page 1

reset for trials. Other cases were pushed to trial without an adequate opportunity for the parties to prepare. Injustices resulted and were widely discussed in the local media.

Responding to this chronic problem, the Council urged the Circuit Court to create a forum where discovery disputes would be resolved efficiently and promptly, and with the consequence that postponements and injustices would be minimized. The Circuit Court appointed two of its members to comprise a "Discovery Court" where all discovery issues in felony cases would be decided.

Over the last 12 months, the Discovery Court has issued 50 discovery orders, resolving those disputes well before trial. Some hearings on discovery have actually resulted in a disposition of the case through guilty pleas. Moreover, the mere existence of the Discovery Court and its demonstrated ability to handle these disputes promptly has forced lawyers to focus more attention on their responsibility to make discovery available. In addition, the Circuit Court has adopted the position that the failure to make discovery will not constitute good cause for a postponement, except in extraordinary cases. As a result, there are no cases being postponed because of a failure to make discovery.

Prosecutors Review Criminal Charges

Historically, it is the arresting officer in Baltimore City who formally charges the defendant, and on that charge, the State's Attorney would try

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the case. Concerned that too many weak or improperly charged cases were clogging the system, which both delayed the prosecution of strong cases and increased the detained population at Central Booking Intake Facility (CBIF), the State's Attorney's Office with Council's guidance established a pilot program in four of the city's nine police districts to review charges on a part-time basis. Beginning in June, 2000, and operating 24 hours, seven days per week citywide, the results have been consistent with expectations raised by the pilot: Of the more than 18,000 cases reviewed by the State's Attorney's Office this year, 15 per cent have resulted in no charges being filed, 11 per cent resulted in reductions from felony to misdemeanor, and 20 percent involved a substantive change by deleting charges or adding new ones. The overall consequence of these reform procedures at work is that though the number of arrests in Baltimore City has not declined over the last year the number of cases to be tried has been substantially decreased. The Council's observation is that the quality of those cases scheduled for prosecution has been improved.

Postponement of Cases

Many measures have been taken to reduce the number of postponements in felony cases at the Circuit Court. The culture that permitted postponements upon request has been changed. All requests for postponement are now considered by a sole judge who requires that good cause be clearly demonstrated. Even so, postponements do occur, primarily because of scheduling conflicts among the attorneys. But online notification and scheduling will resolve many of these conflicts, and further reduce the number of postponed cases. The Circuit Court has reinstated a Move List which holds cases ready for trial for the next available court instead of postponing them. Over the past year, the Council observed that the number of monthly postponements generally declined, although for the last reporting period, there was a slight increase in monthly postponements from 441 in August, 1999, to 524 in August, 2000. Both figures represent dramatic improvement against comparable monthly postponements of 889 in August, 1998, before reforms were initiated. At the same time, the monthly inventory of felony cases awaiting trial at the Circuit Court, according to data compiled by Judiciary Information System, has gone from 4,533 in 1999 to 3,932 for the comparable month in 2000. While the number of postponements continue to be too high and while these inventory figures contain some inaccuracies which the Circuit Court is working to correct, the Council's evidence makes clear that the Circuit Court is now disposing of more

Continued on page 3

The Abell Report published bi-monthly by The Abell Foundation

111 S. Calvert Street, 23rd Floor, Baltimore, Maryland 21202-6174 • (410) 547-1300 • Fax (410) 539-6579

Abell Reports on the Web: <http://www.abell.org>

Continued from page 2

cases than are being filed by the State's Attorney's Office.

Use of Information Technology

State-of-the-art utilization of information technology is an issue that is of concern to the Council. Criminal justice agencies in Baltimore City have never been able to communicate electronically. As a result, the manual or postal systems of communication have caused unnecessary delays and inefficiencies. Over the past year, the Council interviewed vendors of equipment and systems analysis in an effort to find an affordable information system. Many of the proposals considered by the Council were too ambitious, and all except one were too expensive, ranging from \$2,000,000 to \$4,000,000 for a first phase implementation. One vendor involved in the creation of a computerized case management system for the Baltimore State's Attorney's Office proposed a communication network system which, after some negotiations, carried a price of \$400,000. The Council then authorized this vendor to proceed to complete the installation of fiber optic communications lines to link all agencies through a single, secure messaging platform. The vendor proceeded to configure and install necessary file servers and software to support e-mail and scheduling capabilities.

The system is now being tested, and at the same time the vendor is providing enhancements designed to increase the speed of communications within the system while effecting a one-time savings to the Council of approximately \$72,000. The vendor has begun discussions with the Circuit Court judges to design an on-line case man-

agement and scheduling system.

Earlier this year, the Circuit Court adopted and has deployed a differentiated case management system (DCM) for felony cases. While this is still a manual system, it does improve the quality of case scheduling by assigning cases to appropriate tracks for preparation and trial. This has reduced some postponements already. As soon as DCM orders can be utilized on-line, the Council expects a further substantial reduction in schedule conflicts and postponements.

Early Disposition of Misdemeanors

A major challenge to the Council has been to create a program for the early disposition of misdemeanor cases and at the same time, to put to use what has come to be known as "Courtroom 40" at CBIF. The expensive facility has been under-utilized for some years, and, the legislature, sensitive to the overall costs of operating the Baltimore Criminal Justice System, has viewed with concern this seemingly wasted part of the facility; ameliorating the problem has been a high priority charge to the Council. The Council has, over time, effectively integrated Courtroom 40 into the system. The

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courtroom is kept busy with bail reviews and proceedings designed to dispose of cases before they clog the system. This program was described by the Council in its Status Report to the General Assembly of July 25, 2000. Beginning on August 1, 2000, the program was implemented at two days per week using the former Rent Court at the Eastside Courthouse. These cases involved only defendants who were not detained at CBIF, but had been released after an expedited hearing before a court commissioner. Twenty-five percent of cases selected for this docket were resolved by plea, diversion for community service, or nol pros within 48 hours of arrest. Now, these cases are being heard five days per week. On October 24, 2000, renovations to CBIF were sufficiently completed so as to permit the hearing of early disposition cases for detained offenders at Courtroom 40. These reforms begin a program designed to resolve simple cases early, so that there can be sufficient time to adequately deal with the most serious cases.

Many of the cases selected for early disposition involve charges of drug possession. Beginning November 20, 2000, the Baltimore City Police Department began hiring and training the needed number of chemists so that chemical analysis of suspected drugs is now available for the early disposition docket. This means that the analysis is available within 12 hours of arrest, a considerable improvement over the several weeks of waiting that had been routine. Many drug possession cases which cannot currently be plead without chemical analysis will be resolved through early disposition, particularly if enough drug treatment is made avail-

Continued on page 4

Continued from page 3

able for this population.

Recently Mayor O'Malley announced that approximately \$2,000,000 of the \$8,000,000 in state funds for additional drug treatment will be set aside for the early disposition docket.

Other Reform Measures

Bail Reviews

Many bail reviews are conducted through the use of antiquated video conferencing. The Council has pressed for bail reviews to be held in person with prosecutors and defense attorneys participating in the process. Not only does the presence of counsel aid the court in making a proper determination of bail, but it presents the system with yet another opportunity to resolve the case much sooner after arrest. The Council sponsored a pilot program for these bail reviews at Courtroom 40. Unfortunately, less than 4 percent of the bail reviews resulted in a disposition, but the pilot program did help to lead the parties to create the early disposition docket with incentives for admission of guilt at this stage. Where video bail reviews are still necessary at times because of peak volumes the Council has pressed for the use of improved technology, which is available.

The Council was instrumental in persuading the Department of Public Safety to provide the Public Defender's Office with access to database information regarding defendants' criminal histories.

Witnesses at Trial

Many postponements are caused by the failure of police witnesses to appear for trial (FTAs). The Council has overseen efforts by the Police Department to establish liaison officers to coordinate trial appearances and a protocol to discipline officers who fail to appear. Additionally, with its new charging function, the State's Attorney's Office is now able to identify those officers actually needed for trial as witnesses and to issue the summons only for them. In addition to reducing the number of FTAs, unnecessary overtime pay for officers not needed as witnesses can be substantially reduced.

Use of Data Based Information

The Council was instrumental in persuading the Department of Public Safety to provide the Public Defender's Office with access to database information regarding defendants' criminal histories. This access has greatly reduced repetitive and unnecessary background investigations so that the Public Defender is better prepared to offer effective and early representation in bail reviews and to recommend acceptance of plea offers at the early disposition docket.

Improvements In the Probation Department

The Council has overseen and encouraged some effective leadership changes at the Department of Probation and Parole and some increased staffing to reduce caseloads. It has encouraged increased use of their computer system to account for offenders receiving drug treatment while on probation and has been working with the Department to find ways to reduce the

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number of offenders who are "no-shows". There has been some improvement: a drop in the number of offenders who fail to report for assessment is estimated to be from 50 percent to 34 percent, a 16 percent improvement. If assessments can be done at or near the Circuit Court immediately after sentencing, the reduction in no-shows should continue to improve. The Council is exploring appropriate space for drug assessment offices.

The Council has had an active role in the Break the Cycle (BTC) initiative and has educated and encouraged circuit judges to employ BTC orders where appropriate. There are currently more than 1,200 offenders subject to BTC orders which empower probation agents with sanctions and rewards to curb drug behavior.

Use of Courtroom at Central Booking

The Council has explored ways to increase the use of Courtroom 40 at CBIF, a courtroom designed for proceedings without any public involvement either as witnesses or jurors. While full use of that courtroom will not occur until the early disposition docket for detained defendants is fully operational later this year or early next year, the courtroom has been used for habeas corpus hearings, bail reviews and preliminary hearings from time to time.

Continued on page 5

Continued from page 4

One consistent use of this courtroom has been its use for disposition of cases selected by the State's Attorney for Quality Case Review (QCR). Of those defendants who were still incarcerated at CBIF three days after arrest, 21 percent were provided a plea offer by the State's Attorney. In one-half of these cases, the plea offer has been accepted by the defendant and the case has been resolved. On average, the QCR program had disposed of approximately 115 defendants and 194 cases per month in Courtroom 40 over the last year.

Recommendations

Consolidate Violations of Probation Hearings

Currently, violations of probation are heard by the original sentencing judge. At the Circuit Court, scheduling these hearings may take two to three months. Many probation offenders have been apprehended on warrants with preset bails which are usually not reduced and are difficult for them to make. Consequently, CBIF houses a number of probationers for an inordinate amount of time awaiting the hearing on the probation violation and any substantial offense which may have triggered the violation. With a minor change to the Maryland Rules, the Circuit Court in Baltimore could elect to expedite these cases by con-

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solidating the trial of the substantive offense with the probation violation and placing them before a judge for a probable cause hearing for early disposition. A committee of the Circuit Court is working on protocols to allow a few probation agents to present many cases and to provide a mechanism for a specialized VOP court.

Install More "Speed Bumps" to Resolve Cases

At the Circuit Court, the Council should try to establish more opportunities for the parties to resolve cases before trial. Except for Discovery Court hearings, there are no proceedings held between arraignments for cases to plead out. The ruling on a Motion to Suppress will often be dispositive of the whole case. Currently, such motions are usually heard the day of trial when witnesses have already been summoned to appear and after trial preparation has been completed. If these motions were heard before then, cases could be dismissed or pleas of guilty taken without having to bring witnesses to court and without the other expenses attendant to trials. Many cases should be resolved much earlier in the process. Other opportunities could be provided such as pretrial hearings, settlement conferences, or readiness conferences where a judge, not assigned to try the case, could help resolve pretrial disputes and encourage the parties to plead the case. The Council will also look at ways to centralize the assignment of cases on the day of trial and thereby further minimize scheduling conflicts and avoid postponements. Much help will come with improvements to the information technology and computerized scheduling systems. At the same time,

many police witness problems can be corrected with an on-line notification system.

Reassign Certain Cases Where They Belong

Presently, preliminary hearings in felony cases are heard at the District Court where judges are without jurisdiction to dispose of the case through pleas. A jury trial demand of a misdemeanor case (often used as leverage to get a better plea offer from the prosecution) is now transferred for trial to the Circuit Court, where three felony judges are reserved to hear these cases. A working group of the Council is examining the feasibility of conducting misdemeanor jury trials in the District Court and felony preliminary hearings at the Circuit Court. In Baltimore, this can mean relieving three Circuit Court judges to hear felony cases, and placing preliminary hearing before the judge who has the jurisdiction to resolve the case, if possible. The District Court has space available for jury trials. The Council may also explore a constitutional change to allow six person juries in misdemeanor cases.

Arraignments at District Court

Presently, the initial appearance of the defendant in District Court is usually scheduled about 30 days after his arrest and witnesses are summoned for a trial that day. Most cases are not decided at the initial appearance, but the case is postponed to the inconvenience of everyone, particularly the witnesses. A few years ago, a report of the District Court in Baltimore recommended the scheduling of arraignment, not trial, for the initial appearance. The Council should adopt this recom-

Continued on page 6

Continued from page 5

mentation and urge that arraignments be set soon after arrest. If the case does not plead at arraignment, the court can more effectively set a firm trial date for which witnesses will be summonsed for the first time.

Drug Treatment Reforms

Drug-related crime is still the most pressing issue affecting Baltimore and its courts. The Council should continue to monitor drug treatment efforts for the offender population, and to lobby for more treatment slots, more appropriate modalities for certain offenders, and more support for drug treatment court and Break the Cycle programs. Among related issues for the Council is the need to provide (a) more drug assessment at arrest, (b) better communication between the courts, the Department of Public Safety and the treatment providers, (c) better incentive-driven compensation for treatment providers, such as fee for services instead of grant funding, and (d) more input in the allocation of funds available for drug treatment.

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For Baltimore City to realize its long-overdue turnaround and its potential, its citizens must be made to feel safe—on the streets and the sidewalks and in their homes. But the City cannot fulfill that promise without an efficient and effective criminal justice system at work. Towards this goal, much has been done, but as this report makes clear after one year in its short life —

ABELL SALUTES

Continued from page 1

The program, modeled after the STRIVE program developed in East Harlem, is designed to talk to those who up until now would not listen, and who are here to try one more time get a job and get on with the business of working as a productive member of society.

And to help them make it, they entrust themselves to a disciplinary approach to learning and job preparation so harsh that out of an average class of 49, only 38 will show up on the second day.

And so the war begins. Three weeks of being hollered at, put down, corrected, scolded—a technique both students and teachers hope will work where no other has. Finally on graduation day, three weeks later, typically, there will be 25 students left.

But these are the ones who are now set to get the jobs and, who, thanks to STRIVE, will have turned their lives around. What happens to these 25 — and they will be observed for two years after leaving the STRIVE classroom—defines the role of STRIVE in the community.

Here Is A Report Card For STRIVE-Baltimore For The Year 2000:

* 308 Baltimoreans completed the STRIVE-Baltimore Empowerment

much remains to be done. The effort calls for more money, if fresh ideas, and government and community support; but in the end, it requires the leadership of every involved city and state agency, from the governor's office on down, to bring the weight of his or her office to shape and hasten court reform in Baltimore City.

Program. The 308 program graduates is a 33% increase above the program's 1999 accomplishments. It costs \$1,743 to train each graduate, which would appear to be a wise investment given that of the 308 graduates for the year 2000 graduates, 146—nearly half—had felony or misdemeanor convictions, and 109, or one in three, had not received their high school diplomas or GED.

* 80% of the 308 graduates were placed in employment. Of these 249 graduates placed in employment, 28 had been homeless.

* STRIVE graduates who were placed in employment earned on average \$7.73 per hour or \$16,068 per year. This is a considerable accomplishment for the large majority of STRIVE graduates who were unemployed at the start of the program cycle.

The Abell Foundation salutes STRIVE-Baltimore, for its successful approach to rehabilitating broken down lives, and for showing the way to so many who had lost their way.